

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3029 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HUSSAIN JUSABBHAI MATAWA

Versus

STATE OF GUJARAT

Appearance:

MR. Sunil C. Patel for Mr. PR NANAVATI for Petitioner
Mr. D.P.Joshi for Respondent No. 1, 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Sunil C. Patel for
the petitioner and learned A.G.P. Mr. D.P. Joshi for
the respondents nos.1 and 2.

Leave to amend the name of the petitioner as
Hussain Jusabbhai Matawa.

The detention order dated 25-12-1998 passed by

the respondent no.2-Commissioner of Police, Rajkot City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" indicate that two criminal cases vide CR no.52/98 dated 14-5-1998 and CR no.143/98 dated 22-11-1998 have been registered against the petitioner at Malavianagar Police Station for the offences made punishable under the Bombay Prohibition Act. That in both the cases Indianmade foreign liquor has been seized from the possession of the petitioner and proceedings are pending in Court for trial. Over and above the abovestated material of criminal cases, two witnesses on assurance of their anonymity have supplied information about the bootlegging activity of the petitioner.

3. That in consideration of the said material, the respondent no.2 has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and cancellation of bail and as such the subjective satisfaction having been vitiated the order is invalid.

5. On scrutiny of papers, it appears that in paragraph 7 of the grounds of detention, the detaining authority has observed that the petitioner is released on bail in criminal case registered against him and as such in future the petitioner is likely to indulge into antisocial bootlegging activity and as such, it is necessary to pass the impugned order.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

7. In the instant case also, the detaining authority having failed to consider the aspect of less drastic remedy opposing and cancellation of bail discloses the non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction rendering the impugned order invalid.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 25-12-1998 passed by the respondent no.2-Police Commissioner, Rajkot City against the petitioner is hereby quashed and set aside. The petitioner-detenu Hussain Jusabbhai Matawa is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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